

¹ ALJ Order (Dec. 17, 2003) at 1.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant sustained a left shoulder injury during the Vietnam war. Since that time, the record indicates claimant has experienced on and off again symptoms and has periodically received treatment from the Veterans Administration. He has also engaged in manual labor-type jobs for the past 30 years.

For the past 3 years claimant has been employed as a material handler and is required to repetitively remove 10 to 30 pound bags from an assembly line. According to claimant, from approximately August 2002 up to September 22, 2003, his last date worked for respondent, claimant began to notice increasing pain.

On September 4, 2003, claimant was taking bags off the line as he normally does when he experienced a "severe pull in my arm like I never had before."² Claimant believes he told a supervisor, Mike Reeve. Mr. Reeve confirms the fact that claimant advised him that his shoulder was hurt and that claimant was going to the doctor but according to Mr. Reeve, claimant attributed his complaints to his war injury.

On September 11, 2003, claimant went to see Andre' L. Dixon, the processing manager. Claimant advised Mr. Dixon he had seen a physician and that he needed an MRI. Claimant further advised Mr. Dixon that his family physician had indicated that he be referred to the company doctor to address his complaints. At that point, claimant filled out an accident report and he was sent to an occupational facility. Eventually he was referred to Dr. Steven Joyce, an orthopaedic physician, but before any further treatment could be provided, treatment was apparently suspended due to questions relating to the causative aspects of claimant's present need for treatment.

At the preliminary hearing before the ALJ, claimant testified to his previous war injury, his job and the events leading up to his last day of work. Both Michael Reeve and Andre' Dixon testified. A significant number of medical records were placed into evidence. After considering all the evidence offered by both parties, the ALJ concluded that claimant's work aggravated, accelerated and intensified his pre-existing left shoulder condition on September 4 and 5, 2003, and that claimant provided notice on September 11, 2003. The Board finds no fault with the ALJ's analysis.

The pending determination turns upon the claimant's credibility and that of Mr. Reeve and Mr. Dixon. While claimant appears to be somewhat less than accurate in his recollection of his past medical history, the ALJ did not appear to believe him to be

² P.H. Trans. at 8.

deceptive. Claimant admits a rather lengthy history of prior left shoulder problems, dating back 30 years. However, since August 2002 he has experienced an increase in symptoms. Then, on September 4 and 5, there was an acute increase in those symptoms which claimant associates with a "severe pull" which he had not felt before. The law is clear that if a preexisting condition is aggravated, accelerated or intensified, benefits are available under the Workers Compensation Act.³ Taken as a whole, the evidence supports the ALJ's findings and the Board will not disturb those findings.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven J. Howard dated December 17, 2003, is hereby affirmed.

IT IS SO ORDERED.

Dated this _____ day of January 2004.

BOARD MEMBER

c: Robert W. Harris, Attorney for Claimant
Jeff S. Bloskey, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Anne Haight, Acting Workers Compensation Director

³ *Woodward v. Beech Aircraft Corp.*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).